

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE:)	CASE NO. 10-93904-BHL-11
)	
EASTERN LIVESTOCK CO., LLC,)	Hon. Basil H. Lorch, III
)	
Debtor.)	
)	

NOTICE OF SERVICE

COME NOW CPC Livestock, LLC; Alabama Livestock Auction, Inc.; Sealy And Sons Livestock, LLP; Ashville Stockyard, Inc.; Athens Stockyard, LLC; Billingsley Auction Sale, Inc.; Carroll County Livestock Sales Barn, Inc.; E4 Cattle Co., LLC; Ed Edens; Macon Stockyards, Inc.; Edwin A. Strickland d/b/a Strickland Farms; Robert Rawls d/b/a Robert Rawls Livestock; Peoples Livestock Auction, Inc.; Ernie Elder; Vernon Inman; 2Z Cattle; and Glen Franklin (collectively, "Livestock Creditors") to give NOTICE OF SERVICE of Third Party Subpoena Duces Tecum on First Bank and Trust, Lebanon, VA, a copy of which is attached as **Exhibit 1**.

Respectfully submitted this 22nd day of January 2014,

/s/ W. Scott Newbern

W. Scott Newbern
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COUNSEL FOR LIVESTOCK
CREDITORS

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January 2014 a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

/s/ W. Scott Newbern

W. SCOTT NEWBERN

Exhibit 1

UNITED STATES BANKRUPTCY COURT

SOUTHERN

District of INDIANA

In re Eastern Livestock Co., LLC

Debtor

(Complete if issued in an adversary proceeding)

Case No. 10-93904-BHL-11

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Daniel Donnellon, ESQ., on behalf of First Bank and Trust, Lebanon, VA

(Name of person to whom the subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

PLACE

W. Scott Newbern, PL, 2982 East Giverny, Tallahassee, FL 32309

DATE AND TIME

On or before February 5, 2014

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE

DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: January 22, 2014

CLERK OF COURT

W. SCOTT NEWBERN, PL

OR

/s/ W. Scott Newbern, Esq.

Signature of Clerk or Deputy Clerk

Attorney's signature
By: W. Scott Newbern, Esq.

The name, address, email address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)	Chapter 11
)	
EASTERN LIVESTOCK CO., LLC,)	CASE NO. 10-93904-BHL-11
)	
Debtor.)	Hon. Basil H. Lorch, III
)	
)	

EXHIBIT A

THIRD PARTY SUBPOENA DUCES TECUM
FOR INFORMATION AND RECORDS

TO: Daniel Donnellon, Esq. on behalf of FIRST BANK and TRUST, Lebanon, VA
Faruki, Ireland & Cox, PLL
201 E. Fifth Street, Suite 1420
Cincinnati, OH 45202
(T) 513-632-0308
(F) 513-632-0319

Documents requested below may be produced in standard electronic portable document format (.pdf) or other format agreed upon instead of paper copies.

DEFINITIONS

A. Unless otherwise stated in a particular request, “**You**,” and “**Your**” shall mean FIRST BANK AND TRUST CO., Lebanon, VA a/k/a “**Plaintiff**” in the “**Subject Action**” identified herein.

B. “**Fifth Third**” means Fifth Third Bank, a national bank with headquarters located at 38 Fountain Square Plaza, Md., #10 at 76, Cincinnati, Ohio 45263 a/k/a “**Defendant**” in the Subject action identified herein.

C. “**Subject Action**” shall mean the case titled *First Bank And Trust Company v. Fifth Third Bank, et al.*, Common Pleas Court of Hamilton County, OH Case No. A1203855, filed May 16, 2012.

D. “**ELC**” or “**Eastern**” shall mean Eastern Livestock Co., LLC, a/k/a “**Debtor**” in the matter *In Re Eastern Livestock, LLC*, Southern District of Indiana, New Albany Division, Case No. 10-93904 (“**Bankruptcy Action**”), and includes its affiliates, members, officers, employees, attorneys, agents, accountants, and representatives of any kind.

E. “**Trustee**” means and refers to James A. Knauer, as the duly appointed Chapter 11 trustee for Eastern Livestock Co., LLC,” in the **Bankruptcy Action** (*In Re Eastern Livestock, LLC*, Southern District of Indiana, New Albany Division, Case No. 10-93904) and includes his attorneys, agents, and representatives of any kind.

F. “**Receiver**” means and refers to Elizabeth M. Lynch of Development Specialists, Inc., appointed by the Hamilton County Court of Common Pleas in the Receivership.

G. “**Receivership**” means and refers to the lawsuit filed by Fifth Third Bank in Hamilton County Court of Common Pleas styled *Fifth Third Bank v. Eastern Livestock Co., LLC*, Case No. A1010267.

H. “**Stockyards Act**” means the Packers and Stockyards Act of 1921, 7 U.S.C. §§ 181 et seq., and regulations 9 C.F.R. §§201 et seq.

I. “Communications” is used here in the broadest sense consistent with the Florida Rules of Civil Procedure and includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person or by telephone, together with all letters, memoranda, telegrams, email, facsimile, cables, and other writings or documents regardless of their form or method of delivery and storage.

J. “Concerning,” “Referring to” or “Relating to” mean connected with, referring to, concerning, pertaining to, associated with, describing, evidencing, construing, containing or constituting in broadest sense consistent with the Federal Rules of Civil Procedure or applicable state Rule of Civil Procedure.

K. “Document” or “documents” mean the original and any identical or non-identical copy, regardless of origin or location, of any writing or record of any type or description, including, but not limited to, any books, pamphlets, periodicals, letters, memoranda, telegrams, telefaxes, email or electronic mail, reports, records, handwritten or other notes, working papers, charts, graphs, checks, statements, receipts, returns, statistics, minutes, contracts, interoffice and intra-office communications, offers, notations, (in any form, of conversations, meetings or other communications), worksheets, discs, data sheets, correspondence, analyses, diaries, messages (including, but not limited to, telephone conversations or conferences), drawings, photographs, film impressions, voice or tape recordings, videotapes or any other data compilations from which information can be obtained or any other written, recorded, transcribed, punched, taped, filed, electronically stored, imputed or graphic matter, however produced or reproduced, and any drafts, alterations, modifications, changes, and amendments of any of the foregoing, to which you have or had access.

PROTECTIVE ORDERS, OBJECTIONS, and DOCUMENTS WITHHELD

1. For any documents produced that are subject to a Protective Order, please so state and provide a copy of the applicable Protective Order along with the responsive documents.

2. If YOU object to part of a DOCUMENT request and refuse to answer that part, state YOUR objection and answer the remaining portion of that DOCUMENT request. If YOU object to the scope or time period of a DOCUMENT request and refuse to answer for that scope or time period, state YOUR objection and answer the DOCUMENT request for the scope or time period YOU believe is appropriate.

3. With respect to ANY requested DOCUMENT which YOU refuse to produce in response to this Subpoena Duces Tecum, please state:

a. the full identity of the DOCUMENT including:

- i. date of the DOCUMENT;
- ii. its title (if ANY);
- iii. its authors, addressees, recipients or parties;
- iv. the nature of the DOCUMENT (e.g., letter, memorandum, etc.);
- v. the individual or source from whom or which YOU obtained it; and
- vi. its present location and identity of its custodian;

b. whether YOUR objection or refusal is directed to the entire DOCUMENT or part thereof;

c. if YOUR objection or refusal goes to part of the DOCUMENT, specify the specific parts of the DOCUMENT to which YOUR objection or refusal is directed; and

d. the specific factual basis which gives rise to the objection or refusal; and the specific legal ground on which the objection or refusal is based.

4. If ANY of the following requested DOCUMENTS cannot be located or produced after exercising due diligence to secure the information, please so state and respond to the extent possible, specifying YOUR inability to respond fully, and stating whatever information YOU have concerning the non-produced DOCUMENTS.

DOCUMENT AND IDENTIFICATION REQUESTS

1. Please produce all documents and records—including without limitation all depositions, transcripts, exhibits, filings—relating to **Plaintiff** and/or **Eastern Livestock Company, LLC** obtained, referenced, or otherwise employed in the **Subject Action** (i.e. *First Bank and Trust Company v. Fifth Third, et al.*) that are not subject to either attorney client or work product privileges, including specifically all documents and records with respect to Fifth Third's Motion For Summary Judgment and all Exhibits, First Bank's Response and all Exhibits, and Fifth Third's Reply and all Exhibits.

2. Please produce all documents and records—including without limitation all depositions, transcripts, exhibits, filings—relating to **Plaintiff** and/or **Eastern Livestock Company, LLC** obtained, referenced, or otherwise employed in the **Bankruptcy Action** (i.e. *In Re: Eastern Livestock Co., LLC*) that are not subject to either attorney client or work product privileges, specifically all documents and records with respect to Fifth Third's knowledge and records from 2005 to the present relating to:

- (i) Eastern check kiting activity, software kiting alerts, and the “Kiting Account Approval Form,” AND
- (ii) Field investigations and reports regarding Eastern cattle “inventory” and “accounts receivables,” collateralization of Eastern cattle “inventory” and “accounts receivables” for Fifth Third's loans, and the Packers and Stockyards Act.

3. For responsive documents subject to either attorney client or work product privileges please provide the appropriate privilege log.

Respectfully submitted this 22nd day of January 2014.

/s/ W. Scott Newbern

W. SCOTT NEWBERN

Florida Bar No. 0098108

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